THE HON'BLE SRI JUSTICE C.V. RAMULU

Friday, 1st September, 2006

WRIT PETITION Nos.12202, 12203, 12679 and 15308 of 2006

W.P.No.12202 of 2006

Between:

M/s. Maytas Infra Private Ltd.,
Rep. by its GPA holder
P. Janardhana Rao … Petitioner

and

The Superintending Engineer,
Irrigation & Command Area
Development (I&CAD), NKLISI Circle,
MGL., ISP Division-II,
Mahaboobnagar and others … Respondents

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COMMON ORDER:

In all these Writ Petitions, common questions of law and fact arise for consideration; therefore, they are being disposed of by this common Order.

Petitioners are all contractors with the respondents and they have been allotted with certain contracts and entered into agreements therefor. At the time of entering into agreements, collection of seigniorage charges is contemplated under Clause 2.13 of the agreement, which reads as under:

"2.13 **Storage of materials**

Storage of materials shall conform to the IS:458-1978 and IS:457-1957

SEIGNIORAGE CHARGES

Seigniorage charges : The seigniorage charges for the materials covered under this work shall be recovered from the contractor's bill at the following rates:

Sl.No.	Material	Seigniorage charges
1)	Sand	Rs.30.00/Cum
2)	Metal	Rs.33.00/Cum
3)	R.R.Stone for masonry	Rs.33.00/Cum
4)	Revetment stone	Rs.33.00/Cum
5)	C.R.S. Stone	Rs.30.00/Cum
6)	Gravel/Morrum/Earth	Rs.13.00/Cum

The rates are liable to be revised and amended from time to time by the State Govt. by notification in the "Andhra Pradesh Gazette". If the revised seigniorage fee is more than the above mentioned, the recovery from the contractor's bills is as per revised rates.

> Seigniorage charges for the Earth obtained from the distant quarries for the use of standard bank will be recovered at the rate of Rs.13.00/cum.
>
> No seigniorage charges will be recovered for the earth used for the standard bank obtained from the canal cutting."

However, during the subsistence of agreements, respondents started deducting seigniorage fee over and above what has been agreed upon under the above clause, on the ground that even against ordinary earth used by the petitioner-contractors, the seigniorage fee is liable to be deducted. According to the petitioners, G.O.Ms.No.331, dated 21-6-2000, which is a part of the agreement, does not contemplate use of ordinary earth being subjected to seigniorage fee; therefore, the same is arbitrary and illegal.

A detailed counter affidavit has been filed by the 2nd respondent denying the allegations made by the petitioners and stating that the seigniorage charges were provided under the tender documents as per G.O.Ms.No.331, dated 21-6-2000 and at item-6, ordinary earth is also included. However, on verification of the G.O., learned Government Pleader conceded that ordinary earth is not included, but submitted that under G.O.Ms.No.466, dated 24-8-2000, A.P. Minor Mineral Concession Rules,1966 were amended with retrospective effect and the name of the mineral at item-8 of G.O.Ms.No.1172, dated 4-9-1967 was mentioned as 'gravel/morram/earth' instead of 'gravel/morram'. Therefore, there is no difficulty in coming to the conclusion that 'earth' is also included.

Heard both sides.

Whether 'earth' and 'ordinary earth' are one and the same and are liable for seigniorage fee has to be examined. Learned counsel for the petitioners strenuously contended that, in fact, Secretary to Government himself has clarified vide Memo No.4907/R.1(2)/2004-1,

dated 15-9-2005 and requested the Chief Engineer (R&B) to revise the estimates duly making provision for seigniorage charges on ordinary earth, at the rates prescribed by the Government. As such, assuming that ordinary earth is included or rates are enhanced, necessarily estimates need to be revised duly making provision for seigniorage charges on ordinary earth. This has no relevance for the purpose of these cases

Though ordinary earth is not included either in G.O.Ms.No.331, dated 21-6-2000, it has been included in G.O.Ms.No.466,
dated 24-8-2000. Therefore, in the very agreement, it was clarified, as noticed above, that no seigniorage charges will be recovered for the earth used for standard bank obtained from the canal cutting. As such, there is no necessity of going into the question whether it is 'ordinary earth' or 'earth'. Whatever earth brought from outside is liable for seigniorage fee and the earth which is extracted and utilized at the place of execution of the work itself is not liable for seigniorage charges. Therefore, clause 2.13 of the agreement is very clear and it supports the case of the petitioners. Thus, the respondents cannot deduct seigniorage fee for the earth used for standard bank obtained from the canal cutting. As such, if the petitioners are using earth for standard bank obtained from the canal cutting, the respondents are not liable to deduct seigniorage fee against the same as per the agreement entered into between the parties.

In the result, the Writ Petitions are allowed to the extent indicated above. No order as to costs.

01-9-2006

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